RSA 43/2001
BEFORE
THE HON'BLE MRS. JUSTICE ANIMA HAZARIKA

JUDGMENT AND ORDER (ORAL)

The appellant herein being the defendant in Money Suit No.07/1991 on the file of Civil Judge No.2 (Junior Division), Dhubri, preferred the instant appeal assailing the judgment dated 02.03.2001 and decree dated 03.04.2001 passed in Money Appeal No.02/1999 by the Court of learned Civil Judge, (Senior Division) Dhubri, dismissing the appeal preferred against the judgment and decree in the Money Suit No.07/1991, whereby and whereunder the learned First Appellate Court dismissed the appeal filed by the appellant affirming the judgment and decree passed by the learned Civil Judge No.2 (Junior Division), Dhubri.
While admitting the appeal vide order dated 19.09.2001, this Court formulated the following substantial questions of law:

i). Whether the appellate court misconstrued the documents marked as Exhibit 1, 2, 3 and 4 to be negotiable instruments as defined under Section 4 of the Negotiable Instruments Act, 1881?

ii). Whether the suit could be decreed on the said documents Exts. 1, 2, 3 and 4 considering the fact that they were not executed in the stamp paper?

iii). Whether the lower appellate court misconstrued Exhibits 2, 3 and 4 as acknowledgements of debt within the meaning of Section 18 of the Limitation Act?

2. In order to determine the lis between the parties and the substantial questions of law raised, the brief fact is summarized hereinbelow:

The respondent herein as plaintiff filed a Money Suit No.7/1991 praying for the following reliefs:

(a). For a decree of Rs.9500/- with interest @ 15% per annum thereon from the date of filing of the suit till realization of the decreetal amount.

(b). Cost of the suit.

(c). Any other relief which the plaintiff is entitled under law and equity.

The said reliefs rest on the following facts:

On 02.07.1980 the defendant borrowed a sum of Rs.10,000/- (Rupees Ten Thousand) only by executing a hand note agreeing to repay the loan together with interest @5% per month. It was also agreed that after expiry of 6(six) months from the date of execution of the said hand note, the defendant would repay the said amount with interest subject to 1(one) month's prior notice. Thereafter the defendant has paid a sum of Rs.500/- (Rupees Five Hundred) only as part payment towards the principal amount of Rs.10,000/- on 14.05.1983 by executing a receipt. On 12.04.1986, the defendant executed a promissory note to repay the balance amount with interest thereon to the plaintiff. On repeated demands to make payment the defendant took time and executed yet another promissory note on 10.03.1989. Despite of executing promissory notes and assurances, the defendant did not take steps to repay the amount. As such, the plaintiff issued a lawyer's notice to the defendant on 20.08.1990 asking the defendant to make payment of the balance amount of Rs.9500/- (Rupees Nine Thousand and Five Hundred) only with interest thereon. But the defendant did not make any payment so the plaintiff had to file the money suit for recovery of the balance amount with interest thereon praying for the aforesaid reliefs.

3. The defendant on receipt of summons had entered appearance and contested the suit by filing written statements contending, inter alia, the usual grounds as available under Order VIII of the Code of Civil Procedure (Code for short). The main facts pleaded and relief sought for in the written statement is that the plaintiff has no locus standi to bring the suit which was filed on false and baseless grounds. The actual fact is that the plaintiff and his two brothers stood as guarantors for payment of loan taken by the defendant from the U.Co. Bank,

Gauripur for purchasing a truck and the Bank financed the same in the year 1978. The U.Co. Bank, Gauripur, filed mortgage suit against both the plaintiff and defendant/appellant in the year 1982 and since then the plaintiff/respondent had threatened the defendant/appellant and ultimately filed money suit being Money Suit No.7/1991 on false and fabricated facts only to harass the defendant/appellant.

4. Upon the pleading of the parties, the following issues were framed:

(i) Whether the suit is maintainable?

(ii) Whether there is any cause for the suit?

(iii) Whether the plaintiff has locus standi to file this suit?

(iv) Whether on 02.07.80, the defendant borrowed from the plaintiff a sum of Rs.10,000/- by executing a hand note agreeing to repay the same after the expiry of 6(six) months from the date of execution of the same with interest at the rate of 5% per month subject to one month notice ahead?

(v) Whether the plaintiff is entitled to decree as prayed for?

(vii) To what relief or reliefs are the parties entitled?

5. The parties to the suit went for trial claiming their respective claims and in the process, the plaintiff has examined two witnesses PW1 and PW2 and executed 7(seven) documents in support of plaintiff’s case and defendants examined himself as DW1. One CW was also examined.

However, it is to be noted that the defendant has withdrawn himself from the suit at the last stage of the suit and hence the trial Court delivered the judgment after hearing only the plaintiff’s side.

6. The learned trial Court decided the issue Nos.1, 2, 3, 5 and 6 in the affirmative and issue No.4 was decided in favour of the plaintiff and answered in negative.

Accordingly the suit was decreed in favour of the plaintiff.

7. The case was taken on the file of the learned Civil Judge (Senior Division), Dhubri by way of regular appeal as provided under Section 96 of the Code and the learned Court of appeal below after hearing the parties at length along with the evidence on record affirmed the judgment and decree passed by the learned Civil Judge (Junior Division) holding that the learned trial Court has rightly decided the suit and, therefore, the impugned judgment and decree do not deserve any interference thereby dismissed the appeal as aforesaid and affirmed the judgment and decree passed by the learned Court below and hence the regular second appeal before this Court.

8. Heard Mr. TJ Mahanta, learned counsel appearing for the appellant. Also heard Mr. MJ Baruah, learned counsel for the respondent.

9. Appearing on behalf of the appellant Mr. Mahanta, would contend that the learned first appellate court has committed an error which is apparent on the face of the record in misconstruing the documents marked as Exts. 1, 3 and 4 to be promissory notes and the same are thus negotiable instruments as defined under Section 4 of the Negotiable Instruments Act, 1881 (for short NI Act) as well as Exts. 2, 3 and 4 as document of acknowledgements of debt within the meaning of Section 18 of the Limitation Act.

10. Mr. Mahanta has further contended that plaintiff’s claim for repayment of debt alleged to be secured by defendant/appellant on the strength of Exts. 1, 2, 3 and 4 are not valid document in the eye of law and, therefore, the plaintiff’s suit is not maintainable in law in view of the fact that it is not based on a negotiable instrument and as such the plaintiff’s suit ought to have been dismissed.

11. On the other hand, Mr. Baruah, learned counsel appearing for the respond

ent would contend that there is no substantial questions of law involved in the present case requiring interference with the concurrent findings of fact arrived at by both the Courts below.

12. Considered the arguments advanced by the parties. Also perused the judgment rendered by both the Courts below including the evidence on record. The only question urged with regard to the execution of promissory note and as to whether the learned Courts below have wrongly decreed the suit by misconstruing Exts.1, 3 and 4 to be promissory notes as defined under Section 4 of the NI Act as well as Ext.2 as acknowledgement receipt. Both the Courts have held that the defendant on 02.07.1980 borrowed a sum of Rs.10,000/- (Rupees Ten Thousand) only from the plaintiff by executing a hand note to repay the loan together with interest. From the evidence adduced by the plaintiff it would reveal that on 02.07.1980 the defendant took a loan of Rs.10,000/- (Rupees Ten Thousand) only from the plaintiff by executing a hand note. Ext. 1 is the hand note. Ext. 1(1) is the signature of the defendant. The defendant made a part payment of Rs.500/- out of Rs.10,000/- (Rupees Ten Thousand) only. Ext. 2 is the receipt. Ext. 3 and Ext. 4 are the acknowledgment by which the defendant promised to pay the loan amount to the plaintiff. PW 2 is the writer of Ext.1. Ext.1(2) is the signature of PW-2, who has fully supported the contents of Ext. 1. PW-2 has further stated that the signature of the plaintiff is known to him. In his cross examination, PW-2 has admitted the case of the plaintiff. On the other hand CW-1, in his cross examination has stated that Ext. 1(1) and (2) are the signatures of the defendant and he was present at the time of transaction. Ext.1(1), (2), Ext.3(1) and Ext.4(1) are the signatures of the defendant which were given in his presence. He further stated that the plaintiff had paid the loan amount in the 1st week of July, 1980; so from the oral and documentary evidence of the plaintiff side, it is proved beyond doubt that the defendant had borrowed a sum of Rs.10,000/- from the plaintiff in the 1st week of July, 1980. Though the defendant has denied such transaction, the defendant has failed to prove the same. The defendant adduced himself as DW-1 and has simply denied Ext. 1 to 4 and stated that Exts.1(1), 2(1), 3(1) and 4(1) are not his signatures. He has also denied the signature made in Ext. 7(1).

On the other hand, the plaintiff had filed a petition on 22.11.1996 praying to send all the signatures for examination by experts and accordingly Court has passed order(s). But it could not be transmitted as the defendant withdrawn him from the suit, therefore, the challenge made by the defendant could not be proved. Hence considering the oral and documentary evidence on record, the learned Court below has found that the defendant on 02.07.1980 borrowed the sum from the plaintiff by executing promissory note and accordingly defendant is liable to repay the money to the plaintiff as per terms and conditions laid down in Ext. 1 document and hence decreed the suit which was upheld by the learned appellate court. Except the above arguments, the learned counsel for the appellant is unable to point out any perversity in appreciation of facts by both the Courts below.

13. This Court finds that the Courts below have considered the entire materials on record, including the depositions of PW’s, DW’s and CW, the contents of documentary evidence and thus came to a finding that the defendant is liable to pay the money to the plaintiff as per terms and conditions laid down in Ext.1. The appreciation of evidence is balanced and findings are well considered. The scope of Section 100 of the Code is very limited, more so, when both the Courts have dealt with the matter regarding promissory note extensively and in absence of any specific evidence regarding non-execution of the same, no interference in the opinion of this Court is called for.

14. In a catena of decisions, the Apex Court has held that Second Appeal under Section 100 of the Code is maintainable basically on a substantial question of law and not on facts. However, if the High Court comes to the conclusion that the evidence on record, recorded by the Courts below are perverse being based on irrelevant material, the appeal can be entertained and it is permissible for th

e Court to re-appreciate the evidence. It has also been held that the concurrent findings recorded by the trial Court as well as the first appellate court on proper appreciation of materials on record should not be disturbed by the High Court while exercising second appellate jurisdiction, unless the case is made out under Section 100 of the Code to interfere such findings, if necessary by analyzing evidence keeping in view the parameters for such interference.
The Hon'ble Apex Court in Dudh Nath Pandey Vs. Suresh Chandra Bhattasali reported in AIR 1986 SC 1509, laid down that in exercise of power under Section 100 of the Code, the High Court shall not re-appreciate the evidence and come to a different finding contrary to the findings recorded by the first appellate court.

15. In the present case in hand, the Court below held that the defendant on 02.07.1980 borrowed the sum from the plaintiff by executing a promissory note (Ext. 1) and accordingly the defendant is liable to repay the sum to the plaintiff as per the terms and conditions laid down in Ext. 1 and hence decreed the suit which is upheld by the learned appellate Court. While decreeing the suit of the plaintiff, the learned Court also considered the evidence of PWs 1 and 2 and CW 1 thereby rejecting the evidence of DW-1. In view of the same, it will not be justified for this Court to interfere with the said concurrent findings recorded in exercise of power conferred under Section 100 of the Code, more so, while perusing the judgment rendered by the learned Courts below, this Court finds that the trial Court as well as the first appellate court have considered the entire evidence available on record and recorded the finding that the suit promissory note is supported by consideration. The above findings being balanced are not liable to be interfered with.

16. It is also not a case of the appellant that the appreciation of evidence by the Courts below is either perverse or it is a misreading of the evidence by both the Courts below. This Court finds that the learned Courts below have considered the evidence led by the plaintiff and the defendant as well as the Court witness. As has already been mentioned hereinabove, it is a settled principle of law by now that concurrent findings of fact are not open to challenge even if the appreciation of evidence is palpably erroneous. Sufficiency or adequacy of evidence to support a finding of fact is a matter for decision of a Court of fact and the High Court would not interfere with the findings of fact arrived at by both the Courts below which this Court hereby do.

17. For the reasons stated hereinabove, I do not find any substantial questions of law involved to be adjudicated upon. Consequently thereupon no interference is called for in exercise of power under Section 100 of the Code.

18. In the result the regular second appeal stands dismissed. Parties are left to bear their own costs.

19. Send down the Lower Court Records.